

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 IN RE INTEGRATED FINANCIAL
5 ASSOCIATES, INC.

Case No. 2:14-CV-00098-APG

6 STEVEN KALB; KENNETH L.
7 TEMPLETON; TPKT, LLC;
8 INTEGRATED FINANCIAL
9 ASSOCIATES, INC.,

OPINION ON BANKRUPTCY APPEAL

Appellants,

10 v.

11 MUSTAPHA ASSI REVOCABLE LIVING
12 TRUST DATED JUNE 23, 2003,

Appellee.

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14 Appellants Integrated Financial Associates, Inc. (“Debtor”), Steven Kalb, Kenneth
15 Templeton, and TPKT, LLC appeal the bankruptcy court’s order denying their joint motion for
16 attorney’s fees and costs incurred in objecting to a claim filed by Appellee Mustapha Assi
17 Revocable Living Trust Dated June 23, 2003. Appellants argue the bankruptcy court erred by
18 concluding no one other than the Debtor was entitled to pursue attorney’s fees incurred objecting
19 to contract-based claims, and that any fees incurred litigating those claims were minimal.
20 Appellants also argue the bankruptcy court abused its discretion by not awarding fees incurred
21 objecting to tort claims that were maintained without reasonable grounds, and the court failed to
22 apportion fees between nonfrivolous and frivolous claims. Finally, Appellants argue they are
23 entitled to recover all costs.

24 Appellee responds that this Court lacks jurisdiction over this appeal because the order
25 from which Appellants filed a notice of appeal was not final where the amount of costs to be
26 awarded was indefinite. On the merits, Appellee argues the bankruptcy court properly
27 determined that only the Debtor could recover attorney’s fees under the contract because there is
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1 no evidence the Debtor assigned its contractual rights to anyone else. Appellee argues the
2 bankruptcy court properly denied any contract-based fees to the Debtor because the Debtor failed
3 to show any particular fees were associated with defending against the contract-based claims. As
4 to whether the tort claims lacked reasonable grounds, Appellee argues the bankruptcy court was
5 familiar with the record that showed a reasonable basis for the tort claims, even if Appellee did
6 not ultimately prevail on those claims. Finally, Appellee argues costs appropriately were limited
7 to only those costs the Debtor was able to support factually.

8 I lack jurisdiction over part of this appeal. For those portions of the appeal over which I
9 have jurisdiction, I affirm in part and remand in part.

10 **I. Background**

11 Debtor was a hard-money lender that made loans secured by real property, brokered
12 fractionalized interests in those loans, and serviced notes and deeds of trust. (Dkt. #20-4 at 32.)
13 With a downturn in the real estate market, Debtor's borrowers began defaulting on their loans,
14 which led to Debtor defaulting on its obligations. (Dkt. #20-4 at 33.) Debtor filed for bankruptcy
15 protection on March 14, 2011. (Dkt. #20-3 at 93.)

16 An Official Unsecured Creditors' Committee was formed and authorized to recover for
17 the benefit of the estate any transfers to or for the benefit of any insiders of the Debtor, including
18 preferences or fraudulent transfers (the "Insider Claims"). (Dkt. #20-6 at 2-3, 6-7.) The
19 Committee investigated the Insider Claims, including some potential breach of fiduciary duty
20 claims, and subsequently moved the bankruptcy court to approve a settlement of the Insider
21 Claims. (Dkt. #20-6 at 1-4; Dkt. #20-8 at 23-58; Dkt. #20-9 at 1-26.) The settlement consisted of
22 the Insiders—as relevant here Kenneth Templeton, Steve Kalb, and TPKT, LLC—contributing
23 \$100,000 to cover the estate's administrative expenses, and paying fifteen percent of the allowed
24 claims for all unsecured creditors upon plan confirmation. (Dkt. #20-6 at 4; Dkt. #20-9 at 16-17.)
25 In return, the Committee released the Insider Claims, and shares in the reorganized debtor would
26 be issued to TPKT, LLC. (Dkt. #20-6 at 4; Dkt. #20-8 at 139; Dkt. #20-9 at 16-17, 23.)
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1 The bankruptcy court appointed an examiner to review the proposed settlement among the
2 Committee, the Debtor, and the Insiders. (Dkt. #20-08 at 107-46.) The examiner identified
3 various potential causes of action and opined on their probable success, including preferential and
4 fraudulent transfers and breaches of fiduciary duties. (*Id.*) The examiner concluded that the
5 proposed settlement and plan of reorganization “were not within the range of reasonableness and
6 are not fair to creditors.” (Dkt. #20-8 at 143.)

7 Appellee Mustapha Assi Revocable Living Trust Dated June 23, 2003 (the “Trust”), filed
8 a proof of claim in the amount of \$759,235.31 based on a promissory note in that amount. (Dkt.
9 #20-1 at 259-60.) The Trust filed another proof of claim in the amount of \$2,219,000 for “land
10 loans” based on the amount of money the Trust had invested in various fractionalized interests in
11 loans, plus interest. (Dkt. #20-1 at 262-63.) The Trust filed a third proof of claim in the amount
12 of \$1,004,797.01 for “money loaned,” based on a revised statement of the original proof of claim.
13 (Dkt. #20-2 at 1-7.) In an effort to clarify the various proofs of claim, the Trust filed an amended
14 claim in the amount of \$5,573,046.38. (Dkt. #20-2 at 8-16.) The Trust identified the funds sought
15 as: (1) \$1,958,655.35 reflecting the Trust’s investment in fractionalized interests in loans; (2)
16 \$245,561.70 reflecting the Trust’s fractionalized interest in deeds of trust which had not been
17 accounted for, trebled to \$736,685.10 under Nevada Revised Statutes § 41.580; (3) \$200,000
18 reflecting sales proceeds which the Debtor did not account for, trebled to \$600,000 under
19 § 41.580; and (4) \$759,235.31 plus interest under the promissory note, for a total of
20 \$2,277,705.93 when trebled under § 41.580. (Dkt. #20-3 at 96.) The Trust also sought recovery
21 of attorney’s fees and costs. (Dkt. #20-3 at 97.)

22 The Debtor objected to and moved to estimate the amount of the Trust’s claim, for, among
23 other purposes, voting and implementation of the Debtor’s proposed Plan of Reorganization.
24 (Dkt. #20-2 at 17-43.) The Debtor conceded it owed the Trust \$759,235.32, but disputed the
25 other amounts the Trust sought. (Dkt. #20-2 at 17-43, 52.) The Insiders joined the Debtor’s
26 Objection to the Trust’s claim. (Dkt. #20-5 at 1-2.)
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1 Following a multi-day evidentiary hearing and closing arguments, the bankruptcy court
2 sustained the Debtor's Objection and allowed the Trust to recover only the undisputed portion of
3 its claim. (Dkt. #20-1 at 254-55; Dkt. #20-9 at 1001-02.) The bankruptcy court also confirmed
4 the Debtor's Fourth Amended Plan of Reorganization, which incorporated the settlement between
5 the Committee and the Insiders. (Dkt. #20-6 at 48-52; Dkt. #20-7 at 1-52.)

6 Debtor and the Insiders moved to recover fees and costs expended in objecting to the
7 Trust's claim, including fees incurred by the Official Committee of Unsecured Creditors which
8 the Insiders ultimately would have to pay under the Plan. (Dkt. #20-1 at 20-36.) Debtor and the
9 Insiders argued they prevailed on all of the Trust's breach of contract claims, and therefore are
10 entitled to fees under the fee-shifting provision in paragraph 10(h) of the Loan Servicing
11 Agreements. (Dkt. #20-1 at 27-29.) Debtor and Insiders also argued that because they prevailed
12 on the Trust's oral misrepresentation claims based on an integration clause in the Loan Servicing
13 Agreements, they prevailed on a contract-based defense and are entitled to damages under
14 paragraph 10(h) of the Loan Servicing Agreements for those claims as well. (Dkt. #20-1 at 31.)

15 Debtor and the Insiders also sought fees for the Trust's tort claims pursuant to Nevada
16 Revised Statutes §18.010(2)(b), which allows for recovery of fees where a claim is brought or
17 maintained without reasonable grounds. (Dkt. #20-1 at 32-34.) Debtor and Insiders argued the
18 Trust's claims for violations of Nevada Revised Statutes Chapter 645B were brought without
19 reasonable grounds because there is no private right of action under Chapter 645B, and because
20 the sections of Chapter 645B on which the Trust relied were not enacted until after the parties
21 entered into the underlying transactions. (Dkt. #20-1 at 32-33.) Debtor and Insiders also argued
22 the Trusts' oral misrepresentation claims were without reasonable grounds because the
23 bankruptcy court found the allegations were so weak they would not have survived a motion to
24 dismiss. (Dkt. #20-1 at 34.)

25 Debtor and the Insiders thus sought \$198,954.50 in attorney's fees incurred by the
26 Insiders, \$84,374.00 incurred by Debtor's counsel, and \$96,757.50 incurred by counsel for the
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1 Official Committee of Unsecured Creditors, for a total of \$380,086 in attorney's fees. (Dkt. #20-1
2 at 35.) Finally, Debtor and Insiders sought costs in the amount of \$16,202.65. (*Id.*)

3 The Trust opposed the motion for fees and costs. (Dkt. #20-1 at 122-41.) The Trust
4 opposed any request for fees under the contract by the Insiders or the Committee because only the
5 Debtor was a party to the Loan Servicing Agreements. (Dkt. #20-1 at 125, 132-33.) The Trust
6 argued the Debtor was not entitled to fees based on the contracts because the requested fees
7 included matters unrelated to the contract dispute and the requested fees were not reasonable.
8 (Dkt. #20-1 at 125, 133-35.) As to the tort claims, the Trust argued it never pursued Chapter
9 645B claims as independent causes of action, its claims had a reasonable basis given the
10 similarity to claims asserted by others, the Trust pursued claims only against the Debtor not the
11 Insiders or the Committee, and there was no apportionment of fees between the contract and tort-
12 based claims to support a fee award for the tort claims. (Dkt. #20-1 at 125,136-39.) The Trust
13 also objected to the requested costs as lacking in supporting evidence, consisting of unnecessary
14 expenses related to hiring out-of-state counsel, and consisting of costs that are included within
15 overhead expenses. (Dkt. #20-1 at 126, 139-40.)

16 In reply, Debtor and the Insiders argued that the Loan Servicing Agreements allowed
17 assignment of Debtor's rights or duties under the agreements, and the parties agreed that counsel
18 for the Insiders would prosecute the objection to the Trust's claim. (Dkt. #20-1 at 170.) As to the
19 Committee, Debtor and the Insiders argued that the Committee participated in the litigation
20 because the Trust's claim would have a substantial impact on the estate, and the Insiders had
21 agreed to pay the estate's administrative expenses, including the Committee's legal fees. (Dkt.
22 #20-1 at 171.)

23 The bankruptcy court set forth on the record its findings at an October 9, 2013 hearing.
24 (Dkt. #20-1 at 76-94.) As to the misrepresentation claims, the bankruptcy court found there was
25 no evidence the Debtor made false representations in soliciting any loan, and, in any event, the
26 parol evidence rule precluded testimony to contradict the Loan Servicing Agreements. (Dkt. #20-
27 1 at 81.) The bankruptcy court also found the Chapter 645B claims were not viable because the
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1 statutory provisions relied upon were not in effect when the Trust's claims arose, and there is no
2 private right of action under Chapter 645B. (Dkt. #20-1 at 82.) As to the breach of contract
3 claims, the bankruptcy court ruled that there was no evidence Debtor inappropriately
4 administered the loans. (Dkt. #20-1 at 83.) Additionally, paragraph 3 of the Loan Servicing
5 Agreement provides that the servicing agent is not liable for any action or inaction unless it was
6 the result of bad faith, willfulness, or gross negligence. (Dkt. #20-1 at 83.) The bankruptcy court
7 found no evidence of bad faith or willful or gross negligence. (Dkt. #20-1 at 83.) The bankruptcy
8 court also found the Trust had failed to establish its damages were proximately caused by the
9 Debtor's decisions related to some of the investments as opposed to being caused by the general
10 real estate market crash. (Dkt. #20-1 at 84-86.)

11 The Insiders thereafter submitted a bill of costs consisting of \$1,123.82 in printing costs,
12 along with \$9,736.88 for various other costs including airfare, hotel, and meals, for a total of
13 \$10,860.70 in costs. (Dkt. #20-1 at 97-99.) The Insiders also requested \$5,341.95 in costs
14 incurred by the Debtor. (Dkt. #201- at 105.)

15 On December 18, 2013, the bankruptcy court held a hearing on the motion for fees and
16 costs, and stated its findings on the record. (Dkt. #20-9 at 1006-35.) The bankruptcy court denied
17 the Insiders fees based on the contracts because there was no assignment of the Debtor's rights
18 under the Loan Servicing Agreements to the Insiders, and the Insiders thus were not a proper
19 party to enforce the Loan Servicing Agreements. (Dkt. #20-9 at 1031-32.) The bankruptcy court
20 also found that even if the Insiders could enforce the agreements, the amount expended on the
21 contract-based claims "would have been very minimal amounts" because the case "was all mainly
22 about the torts." (Dkt. #20-9 at 1032.) The bankruptcy court also denied fees for the tort claims,
23 stating:

24 [S]ome of the claims may have had some basis, but it failed in the way of proof.

25 And I'm not so sure that it failed in proof because the proof wasn't there or
26 because the litigation strategy was that you were just going to rely on aren't these
insiders awful and that just wasn't sufficient.

27 I can't say that this was brought to harass. I'm not so sure that the creditor
28 and/or his counsel just didn't buy their own Kool-Aid, drink their own Kool-Aid.

1 They got lost in the concept that the money was gone as opposed to
2 analysis of the various legal theories and the proof of each and every legal theory
3 as I made clear in my findings of fact and conclusions of law. Having said that, I
4 don't find a basis for saying that it was meant to harass or without reasonable
5 grounds.

6 The 645(b) [sic], I, too, never quite understood what the point of that was,
7 but there wasn't much spent on that in any case, and there's certainly no right for
8 attorneys fees under those grounds.

9 (Dkt. #20-9 at 1032.) The bankruptcy court allowed the Debtor's costs "based upon proof of
10 what those costs were." (Dkt. #20-9 at 1033.)

11 On January 6, 2014, the bankruptcy court entered the order denying the Insiders' and
12 Debtor's motion for attorney's fees and costs. (Dkt. #20-1 at 4-5.) The order adopted the findings
13 of fact and conclusions of law set forth on the record at the hearing. (*Id.* at 5.) The bankruptcy
14 court denied the request for attorney's fees in total, and awarded costs to Debtor's counsel "up to
15 \$5,341.95 upon providing the Trust with invoices or receipts evidencing costs directly relating to
16 Debtor's Objection to the Trust's claim." (*Id.*) Debtor and the Insiders appealed the order
17 denying attorney's fees and costs on January 16, 2014. (Dkt. #1; Dkt. #20-1 at 8.) The
18 bankruptcy court held a further hearing regarding the Debtor's costs on March 12, 2014, and
19 awarded the Debtor \$3,246 in costs. (Dkt. #16-1 at 1, 18-23.)

20 II. Jurisdiction

21 The district court has jurisdiction over a bankruptcy appeal from the bankruptcy court's
22 "final judgments, orders, or decrees," and interlocutory orders with leave from the bankruptcy
23 court. 28 U.S.C. § 158(a)(1) & (3). Appellants did not seek or obtain leave from the bankruptcy
24 court to appeal. Consequently, I have jurisdiction only if Appellants are appealing a final
25 judgment or order. *In re Lazar*, 237 F.3d 967, 985 (9th Cir. 2001).

26 "An order is final if it constitutes a complete adjudication of the issues at bar and clearly
27 evidences the judge's intention that it be final." *In re Wiersma*, 483 F.3d 933, 938 (9th Cir. 2007).
28 Additionally, "a bankruptcy order is appealable where it 1) resolves and seriously affects
substantive rights and 2) finally determines the discrete issue to which it is addressed." *Id.*
(quotation omitted). An order that awards attorney's fees or costs but which does not specify the

1 amount awarded “is not a final, appealable order.” *Jensen Elec. Co. v. Moore, Caldwell, Rowland*
2 *& Dodd, Inc.*, 873 F.2d 1327, 1329 (9th Cir. 1989).

3 Here, the bankruptcy court’s decision denying attorney’s fees to the Debtors and Insiders
4 was final. The order denied the request for attorney’s fees in its entirety, and evinces the
5 bankruptcy judge’s intent that the resolution of that issue was final. No further order was
6 contemplated or entered by the bankruptcy court regarding attorney’s fees. The order also is final
7 as to the costs requested by the Insiders. The order did not award any of the Insiders’ requested
8 costs and did not leave open the possibility that the Insiders could make a future showing of
9 allowable costs. I therefore have jurisdiction over these aspects of the appeal.

10 However, the bankruptcy court’s order is not final as to the Debtor’s request for costs.
11 The order awarded Debtor’s counsel “costs of up to \$5,341.95 upon providing the Trust with
12 invoices or receipts evidencing costs directly relating to Debtor’s Objection to the Trust’s claim.”
13 (Dkt. #20-1 at 5.) The order thus made only a conditional award in an unspecific amount not to
14 exceed \$5,341.95, dependent upon the Debtor making a sufficient showing in support. The
15 bankruptcy court held a later hearing on the Debtor’s cost and awarded only \$3,246. Debtor did
16 not appeal from that ruling. Because the bankruptcy court’s order was not final as to the Debtor’s
17 costs, I lack jurisdiction over that aspect of the appeal.

18 **III. Standard of Review**

19 The Court reviews a bankruptcy court’s award of attorney’s fees for an abuse of discretion
20 or erroneous application of the law. *In re Hoopai*, 581 F.3d 1090, 1095 (9th Cir. 2009). “A
21 bankruptcy court abuses its discretion if it applies the law incorrectly or if it rests its decision on a
22 clearly erroneous finding of a material fact.” *In re Brotby*, 303 B.R. 177, 184 (9th Cir. BAP
23 2003). Conclusions of law are subject to de novo review. *In re Rains*, 428 F.3d 893, 900 (9th Cir.
24 2005). Factual findings are clearly erroneous only if the findings “leave the definite and firm
25 conviction” that the bankruptcy court made a mistake. *Id.* (quotation omitted). The Court may
26 affirm the bankruptcy court’s decision “on any ground fairly supported by the record.” *In re*
27 *Warren*, 568 F.3d 1113, 1116 (9th Cir. 2009). However, the bankruptcy court must explain its
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1 reasons for granting or denying a motion for fees or costs to allow this Court to conduct
2 meaningful appellate review. *See Liti v. C.I.R.*, 289 F.3d 1103, 1105 (9th Cir. 2002).

3 **IV. Attorney's Fees**

4 "[A] prevailing party in a bankruptcy proceeding may be entitled to an award of attorney
5 fees in accordance with applicable state law if state law governs the substantive issues raised in
6 the proceedings." *In re Baroff*, 105 F.3d 439, 441 (9th Cir. 1997). "Because state law necessarily
7 controls an action on a contract, a party to such an action is entitled to an award of fees if the
8 contract provides for an award and state law authorizes fee shifting agreements." *Id.* The Trust's
9 claims were based on a contract and state law tort claims, so Nevada law controls whether a fee
10 award is appropriate.

11 Under Nevada law, attorney's fees are not recoverable "unless authorized by statute, rule,
12 or agreement between the parties." *First Interstate Bank of Nev. v. Green*, 694 P.2d 496, 498
13 (Nev. 1985). Nevada allows parties to freely provide for attorney's fees "by express contractual
14 provisions." *Davis v. Beling*, 278 P.3d 501, 515 (Nev. 2012). Additionally, Nevada allows for the
15 recovery of attorney's fees when a claim "was brought or maintained without reasonable ground
16 or to harass the prevailing party." Nev. Rev. Stat. § 18.010(2)(b).

17 **A. Attorney's Fees for Contract Claims**

18 I interpret an attorney's fee provision in a contract to discern the contracting parties'
19 intent. *Davis*, 278 P.3d at 515. I begin with the contract's plain language. *Id.* If the contract
20 language is clear and unambiguous, I must enforce it "as written." *Id.* Here, section 10(h) of the
21 Loan Servicing Agreements states:

22 If any action or arbitration proceeding is brought by any Party on account of any
23 breach hereof or to enforce or interpret any of the provisions hereof, or if any Party
24 incurs attorney's fees on account of any breach of the any of the provisions hereof,
25 the Party prevailing in enforcing its rights hereunder shall be entitled to recover
26 from the non-prevailing Party or Parties all costs and expenses, including
27 attorney's fees reasonably incurred in connection therewith.
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1 (See, e.g., Dkt. #20-1 at 185.) The Agreements define “Party” and “Parties” to mean the Debtor
2 and the Trust. (See, e.g., Dkt. #20-1 at 181, 185.) By the contracts’ plain language, the only
3 parties entitled to receive attorney’s fees based on the contracts are the Debtor and the Trust.

4 The Insiders argue they are entitled to recover attorney’s fees under the contracts, both on
5 behalf of themselves and on behalf of the Committee, because the Debtor assigned its contractual
6 rights under the Loan Servicing Agreements. The bankruptcy court’s determination that there
7 was no such assignment was not clearly erroneous. There is no evidence any assignment of
8 contractual benefits occurred, and the Insiders present no evidence or legal authority that the
9 Debtor could have done so outside a confirmed plan. That the Debtor’s, Insiders’, and
10 Committee’s interests may have been aligned, that they chose to allocate duties amongst them to
11 respond to the Trust’s objection, and that the Insiders ultimately would bear the cost of
12 administrative expenses upon Plan confirmation, does not constitute an assignment of contract
13 rights. Moreover, the Debtor seeks to recover its own fees incurred in relation to the Trust’s
14 contract claims, which supports the finding that the Debtor never assigned its contractual rights to
15 the Insiders. *Easton Bus. Opp. v. Town Exec. Suites*, 230 P.3d 827, 832 (Nev. 2010) (stating that
16 to establish an assignment, the “assignor must manifest a present intention to transfer its contract
17 right to the assignee.”). The bankruptcy court’s conclusion that no assignment occurred is not
18 clearly erroneous, and I affirm the bankruptcy court’s denial of fees to the Insiders incurred
19 objecting to the Trust’s contract-based claims.

20 However, the bankruptcy court also denied the Debtor any fees related to the contract
21 claims. The bankruptcy court did not explain why it denied fees to the Debtor, stating only that
22 any such fees would be “minimal.” But minimal fees does not necessarily mean that no fees were
23 reasonably expended by the Debtor to defend against the Trust’s contract-based claims. The
24 bankruptcy court did not provide an adequate explanation to allow for meaningful appellate
25 review. *See Liti v. C.I.R.*, 289 F.3d at 1105. I therefore remand to the bankruptcy court to explain
26 the basis for its denial of all fees to the Debtor incurred in objecting to the Trust’s contract-based
27 claims.
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1 **B. Attorney's Fees for Tort Claims**

2 Nevada permits an award of attorney's fees where a claim or defense "was brought or
3 maintained without reasonable ground or to harass the prevailing party." Nev. Rev. Stat.
4 § 18.010(2)(b). A claim or defense "is frivolous or groundless if there is no credible evidence to
5 support it." *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793, 800 (Nev. 2009). An award under
6 §18.010(2)(b) must be supported by evidence in the record. *Semenza v. Caughlin Crafted Homes*,
7 901 P.2d 684, 687 (Nev. 1995). Whether and in what amount to award fees lies within the court's
8 discretion. *Rodriguez*, 216 P.3d at 800. If there are several claims at issue, and the court finds
9 that some claims are groundless while others are not, the court should allocate fees between the
10 grounded and groundless claims. *Bergmann v. Boyce*, 856 P.2d 560, 563 (Nev. 1993).

11 The bankruptcy court held a multi-day evidentiary hearing on these claims, and although
12 it found each of the Trust's tort claims failed for one reason or another, the bankruptcy court did
13 not find that the claims lacked any credible evidence in support. Rather, the bankruptcy court
14 ruled that the claims failed because the evidence presented did not fully support the legal theories
15 asserted. The record shows the tort claims had some basis, including the Committee's and the
16 Examiner's independent conclusions that there were potential claims for breach of fiduciary duty.
17 (Dkt. #20-6 at 16-18; Dkt. #20-8 at 23-58, 105-46.) Additionally, the Trust presented some
18 evidence of misrepresentations even if the evidence was insufficient to support a
19 misrepresentation claim for other reasons. (Dkt. #20-9 at 988-89, 993-1001.) I therefore affirm
20 the bankruptcy court's decision denying fees for the misrepresentation claims.

21 However, the bankruptcy court found the Chapter 645B claims lacked a credible legal
22 basis because there was no private right of action to enforce Chapter 645B, and the statutory
23 provisions on which the Trust relied were enacted after the underlying transactions. The
24 bankruptcy court nevertheless denied fees because "there wasn't much spent on that in any case,
25 and there's certainly no right for attorneys fees under those grounds." (Dkt. 20-9 at 1032.) As
26 with the contract-based claims, the fact that only "minimal" fees may have been expended in
27 relation to these claims does not necessarily support a denial of all fees. I therefore remand for
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1 the bankruptcy court to explain its decision denying all fees in relation to the Chapter 645B
2 claims, as it appears the bankruptcy court found those claims lacked any credible legal basis from
3 the outset.

4 **V. Insiders' Costs**

5 The bankruptcy court denied all costs to the Insiders, but did not explain the denial
6 sufficient to allow for meaningful appellate review. *See Liti v. C.I.R.*, 289 F.3d at 1105. I
7 therefore remand for the bankruptcy court to explain the basis for denying costs to the Insiders.
8 Fed. R. Bankr. P. 7054(b); LR 7054; LR 54-1-14.

9 **VI. Conclusion**

10 IT IS THEREFORE ORDERED that this Court lacks jurisdiction to review the
11 bankruptcy court's decision regarding the Debtor's cost award.

12 IT IS FURTHER ORDERED that the bankruptcy court's Order Denying Insider's and
13 Debtor's Motion for Recovery of Attorney's Fees and Costs is hereby AFFIRMED in part and
14 REMANDED in part. The bankruptcy court's order is affirmed as to: (1) the denial of attorney's
15 fees on the contract claims for the Insiders, and (2) the denial of attorney's fees on the tort claims
16 except for the Chapter 645B claims.

17 IT IS FURTHER ORDERED that this action is REMANDED to the bankruptcy court to
18 further explain its decisions: (1) denying attorney's fees to the Debtor on the contract-based
19 claims, (2) denying attorney's fees on the Chapter 645B claims, and (3) denying costs to the
20 Insiders.

21 DATED this 20th day of October, 2014.

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24 _____
25 ANDREW P. GORDON
26 UNITED STATES DISTRICT JUDGE
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